

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**SERVICE EMPLOYEES)
INTERNATIONAL UNION, LOCAL #3,)
RACHEL CANNING and VELVET)
HAZARD,)**

Civil Action No.: _____

Plaintiffs,

v.

**MUNICIPALITY OF MONROEVILLE)
and MUNICIPALITY OF MT.)
LEBANON,)**

Defendants.

VERIFIED COMPLAINT

A. INTRODUCTION

1. Plaintiffs are a labor organization and two individuals who are engaged in a get-out-the-vote campaign for the November 2 presidential election. Working in conjunction with many other organizations and groups, they have recruited over a 1000 volunteers to go door-to-door in the defendant municipalities, and other towns in Allegheny County, this weekend in order to encourage people to vote and help them identify their proper polling places.

2. This First Amendment lawsuit is brought to challenge Monroeville's and Mt. Lebanon's restrictions on door-to-door canvassing. The restrictions include registration and permit requirements, and Monroeville also exacts a fee. Two years ago the United States Supreme Court held that a similar Ohio ordinance was facially unconstitutional. Plaintiffs seeks preliminary, and thereafter permanent, injunctive relief to enjoin the registration and permitting requirements so that their volunteers may proceed with get-out-the-vote canvassing activities this weekend without

interference and restrictions by the Defendants.

B. JURISDICTION

3. This action seeks to vindicate rights protected by the First and Fourteenth Amendments to the United States Constitution and is brought under 42 U.S.C. §1983. The Court has jurisdiction over this civil rights action pursuant to 28 U.S.C. §1331(a) and §1343(a)(3) and (4). This Court has jurisdiction pursuant to 28 U.S.C. §§2201 and 2202 to declare the rights of the parties and to grant all further relief found necessary and proper.

C. PARTIES

4. Plaintiff Service Employees International Union, Local #3 (“SEIU”) is a volunteer association and an unincorporated labor organization engaged in representing employees in collective bargaining with employers. SEIU maintains a district office in Pittsburgh, Pennsylvania. SEIU and its members are involved in the get-out-the-vote effort this weekend.

5. Plaintiff Rachel Canning is a resident of Allegheny County. She is a volunteer working to organize and implement the get-out-the-vote campaign this coming weekend, working with many national and local groups and organizations.

6. Plaintiff Velvet Hazard is a resident of Allegheny County. She is a volunteer working to organize and implement the get-out-the-vote campaign this coming weekend, working with many national and local groups and organizations.

7. Defendant Municipality of Monroeville is a Home Rule Charter Municipality, approved by the electorate on May 21, 1974, and is located in Allegheny County Pennsylvania. Monroeville’s

municipal offices are located at 2700 Monroeville Boulevard, Monroeville, Pennsylvania, 15146-2388. Monroeville is organized, and operates, under the laws of Pennsylvania. All Monroeville employees and elected officials hereafter referenced were at the relevant times operating under color of state law.

8. Defendant Municipality of Mt. Lebanon is a Home Rule Charter Municipality, approved by the electorate on May 21, 1974, and is located in Allegheny County Pennsylvania. Mt. Lebanon's municipal offices are located at 710 Washington Road, Mt. Lebanon, Pennsylvania, 15228-2018. Mt. Lebanon is organized, and operates, under the laws of Pennsylvania. All Mt. Lebanon employees and elected officials hereafter referenced were at the relevant times operating under color of state law.

D. FACTS

9. SEIU Local #3 and plaintiffs Canning and Hazard have been working with many other groups and organizations to conduct a get-out-the-vote campaign before Election Day. They have recruited over a thousand volunteers to visit the homes of registered voters in Allegheny County, beginning on Saturday, October 30, and continuing through Election Day, Tuesday, November 2.

10. The volunteers plan to go door-to-door in many Allegheny County municipalities, including Monroeville and Mt. Lebanon.

11. The volunteers will hand out literature, emphasize the importance of this year's presidential election, encourage the people to vote, and help the voters determine their proper polling location.

12. The volunteers' door-to-door activities are a form of "charitable" or "political solicitation," and are protected by the First Amendment to the United States Constitution. U.S. Const. Amend. I.

The activity is often referred to as “canvassing” or “door-to-door solicitation.”

13. Canvassing is an inexpensive and highly effective form of communication, for which there is no comparable and affordable alternative.

14. Monroeville and Mt. Lebanon are two of many Allegheny County municipalities that have facially unconstitutional ordinances restricting canvassing. The ordinances are overbroad and otherwise violate the First and Fourteenth Amendments to the U. S. Constitution. The respective ordinances are discussed below.

Monroeville

15. Monroeville Municipal Ordinance, Chapter 282, is titled “Peddling and Soliciting.” A copy of Chapter 282 is attached as Exhibit 1.

16. Chapter 282 makes it illegal for anyone, including people representing charitable, political and religious organizations, from going to people’s homes to disseminate any information without first obtaining a “license” and permit from the Municipality.

17. §282-3 makes it unlawful for “any solicitor ... to engage in any business within the Municipality of Monroeville without first obtaining a license therefor in compliance with provisions of [Chapter 282].”

18. A “solicitor” includes

any person who ... [g]oes from private house to private house, business to business or parking lot to parking lot, disseminating any written information for himself or herself or for any organization for any purposes, soliciting donations or moneys for himself or herself or for any organization for any purpose, whether or not anything of value is given in return.

§282-1 Definitions: Solicitor, subsection C.

19. The only exception to the licensing requirement is for “acts of merchants or their employees

or agents in delivering goods or services in the regular course of business, nor shall it apply to any manufacturer or producer in the sale of bread and baker products, meat and meat products or milk and milk products.” §282-2.

20. The license application must be filed in writing with the Monroeville Police Department on a prescribed form that requires the applicant’s name and physical description, permanent home and local address, description of the organization and its address, two recent photographs of each canvasser, a statement whether the canvasser has been convicted of any felony, and the period and times during which the canvassing will occur. §282-4.A. If the organization is a “charitable institution,” it also must submit a copy of the “grant of exemption issued by the Internal Revenue Service.” §282-4.A.8.

21. The ordinance requires an unspecified fee. §282-4.B.

22. The ordinance establishes a separate, different and less demanding procedure for “any school, political, patriotic, philanthropic or civic organization, benevolent society, service club or organization, not for profit, which is not a transient merchant and whose solicitors are permanent residents of the municipality....” §282-4.C. Canvassers under this provision need only submit their names and addresses, cause for the permit, and sponsoring organization’s name and address. The fee is waived for permanent residents registering under this section. §282-4.D.

23. If the Monroeville Police Department, after conducting a review, determines that the information on the application is true and the applicant has paid the fee, they shall deliver the license “within five (5) days after payment of the fee....” §282-5.B.

24. No license shall be issued to any “convicted felon.” §282-5.B.

25. Each solicitor or canvasser must obtain their own license from the Police Department, which will contain their name and photograph. §282-5.C.

26. The ordinance exempts from the fee solicitors for “charitable organizations,” §282-6, which are defined as any organization granted tax exempt status under §§501(c) and 509(a) of the Tax Code.

27. The ordinance also prohibits canvassing on Sunday’s and on other days before 9:00 a.m. and after 5:00 p.m. §582-8.A.

28. Individual homeowners may post “no solicitor” signs on their property, which then prohibits any canvassers from coming onto the property. §282-8B. and C. Plaintiffs do not challenge the constitutionality of these provisions.

29. Failing to comply with the licensing requirements is punishable by a fine of not more than \$600 for each and every separate offense. §282-13.

30. When Ms. Canning contacted the Monroeville Police Department on Wednesday, October 27, 2004, to inquire about the Municipality’s requirements for door-to-door canvassing, she was told by a woman named Linda, who stated that she was the police chief's secretary, that every individual canvasser must obtain a permit. To do so, each person must personally come to the police station, bring two forms of identification and two pictures (one for the municipality to keep), and pay \$10. The fee was for a criminal background check. Additionally, the organization must pay \$50 per week, regardless how many canvassers are deployed. Linda stated that it takes at least two days to get a permit.

Mt. Lebanon

31. Mt. Lebanon also has an ordinance that establishes a licensing requirement for anyone wishing to canvass door to door. Part 3 of Mt. Lebanon’s municipal code regulates “solicitors.” A copy of Part 3 is attached as Exhibit 2.

32. The ordinance makes it “unlawful for any Person to Solicit in the Municipality without first

obtaining a permit” and “without first registering with the Police Department.” §302. The ordinance makes no exception for charitable, religious or political organizations. §301.

33. Mt. Lebanon’s permit application process is set forth in §304. It requires a sworn application to the Police Department that includes background and contact information for the organization, the name and address of each individual solicitor, the purpose for the solicitation, and the period and times of solicitation.

34. The Police chief shall issue permits if the information is complete and the requisite fees are paid, §305.1, but he has five days to do so, §305.2.

35. The fee is \$50 for each permit, and covers the cost of a “criminal records check.” §306. The fee shall be waived for persons soliciting only one time within any one year.

36. Failure to obtain a permit and to have it available at the request of any resident or police officer is subject to a \$300 fine. §310.

37. Individual canvassers must also register with the Police Department and provide their name and address, the dates and hours they will be canvassing, the locations they will canvass, and a photo identification.

38. When Ms. Canning contacted the Mt. Lebanon Police Department on Wednesday, October 27, 2004, to inquire about the Municipality’s requirements for door-to-door canvassing, she was told by a woman named Yvette that every person must register personally at the police department, provide their name address, and photo identification, and then list the date, time and location of the canvassing activity. There was no mention of a fee.

General Matters Relating to Both Municipalities

39. Plaintiffs, and many others working with them on the get-out-the-vote endeavor, do not have

the time and resources to register each canvasser individually at the two municipalities.

40. The get-out-the-vote effort scheduled for this weekend and early next week cannot be delayed. The election is on Tuesday, November 2. Communication about the election and the voting process with Monroeville and Mt. Lebanon residents cannot be replicated at a later date.

41. Unless this Court grants the requested temporary restraining order and/or preliminary injunction to enjoin Monroeville and Mt. Lebanon from requiring Plaintiffs and others similarly situated to obtain a license or permit prior to canvassing, they will suffer irreparable harm for which there is no adequate alternative at law.

E. CAUSES OF ACTION

42. Both Monroeville's and Mt. Lebanon's ordinances are prior restraints on speech that violate Plaintiffs' rights under the First Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment to the United States Constitution, and 42 U.S.C. §1983. They are unconstitutional both facially and as applied in this instance to the Plaintiffs.

F. RELIEF

WHEREFORE, Plaintiffs request that this Court:

- I. Declare that Monroeville Ordinance Chapter 282 and Mt. Lebanon Ordinance Part 3 are overbroad and facially unconstitutional under the First and Fourteenth Amendments to the United States Constitution;
- II. Issue preliminary and permanent injunctive relief enjoining the Defendant municipalities, their respective officers, employees, agents, assigns, and anyone else working in concert

with them, from enforcing their respective soliciting ordinances, and specifically enjoin them from prohibiting or otherwise interfering with plaintiffs and anyone else who goes onto people's private property to engage in canvassing activity;

- III. Award Plaintiffs their costs and attorneys' fees pursuant to 42 U.S.C. §1988; and
- IV. Grant such other relief as the Court deems just and appropriate.

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Attorney for Plaintiffs

October 28, 2004

VERIFICATION

I, Rachel Canning, hereby affirm under the penalties of perjury as follows:

1. I am over the age of 18 and otherwise competent to testify.
2. The factual allegations in the foregoing Verified Complaint are, to the best of my knowledge and belief, true and accurate.

Rachel Canning

date